



Dale Saran <dalesaran@gmail.com>

Comirnaty Offer

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Tue, Aug 23, 2022 at 2:26 PM

To: "Snyder, Cassandra M (CIV)" <Cassandra.M.Snyder@usdoj.gov>

Cc: Brandon Johnson <bcj@defendingtherepublic.org>, Travis Miller <twm@defendingtherepublic.org>, pete <pete@silentmajorityfoundation.org>, "Lowenstein, Jody D. (CIV)" <Jody.D.Lowenstein@usdoj.gov>

Cassie,

No plaintiffs are interested in "Comirnaty-*labeled* vaccine" any more than I am interested "Budweiser-*labeled* beer" if offered by a friend. C'mon. The offer alone fairly screams that you don't have licensed Comirnaty and DoJ attorneys are only willing to call it "Comirnaty-labeled" so as not to get caught in a complete factual whopper that might later get sent to someone's bar.

You must know that among our clients is USCG LT Chad Coppin, who has sworn under [penalty of perjury to Sen. Ron Johnson](#) with pictures that the "Comirnaty-labeled vaccine" is an EUA Lot (# FW1331).

Cassie, I don't mean to be impolite, but DoJ trial attorneys are on the hook for a 100% factually inaccurate statement in open court regarding the availability of Comirnaty in the *Coker* case. I don't need to rehash it, but I refer to Brandon Johnson's document filed yesterday (ECF 106) in *Coker* for the background and details. And I have had multiple military client cases with Judge Advocates making assertions they have Comirnaty like it's a black-market drug deal. I believe Brandon has adequately covered the history and most of the legal arguments regarding this whole "Comirnaty-labeled" episode.

If you have FDA-licensed products, then I should expect that your other client - the FDA, not the DOD - can give us which Lot numbers, and all of the other regulatory essentials that attend the shipment of biologics in the United States, a very highly regulated class of products, as I'm sure you're aware. If Comirnaty is available, then I expect to see the FDA's website and all of the associated regulatory mechanisms provide the necessary - i.e. legally required - notices, publications, etc, to evince any such claim.

It is also my view that if Comirnaty is "available," then by law the EUA for BNT162b2 and any other affected products must terminate. It's a pre-requisite for the use of EUA products "(3) that there is no adequate, approved, and *available* alternative to the product for diagnosing, preventing, or treating such disease or condition." If the govt has licensed product available, then we expect to see the at least the beginnings of all of the regulatory machinery acting to reflect that, including the notices by the Secretary and others required under 21 USC 360bbb-3.

Instead, what we (collectively) see looks to me like nothing more than another instantiate offer to be used as a claim in front of the court that the defendants can somehow again evade a federal court looking at what's going on inside the FDA. Seriously, is the FDA ever going to enforce the biosimilarity laws/bioequivalency laws for "interchangeability" of mRNA products? Or will we just forever have to look for FN #8 references in other licensed products that are then summarily removed from the market, that these other (EUA) products are "good enough" and "present no concerns about safety of efficacy" etc, etc.

It's not a serious offer. When you have FDA approved Lot numbers for us, and other assurances that this isn't just a trial strategy, we'll be waiting to hear it.

But now you'll have to convince me that this isn't another Lucy and Charlie Brown after twice going to that well.

Cheers,

Dale

On Thu, Aug 18, 2022 at 9:02 AM Snyder, Cassandra M (CIV) <Cassandra.M.Snyder@usdoj.gov> wrote:

Hi Dale,

I am sending this email with instructions for any Plaintiff in this matter who would like to receive a Comirnaty-labeled vaccine. Defendants now have over 42,000 doses of Comirnaty-labeled vaccine. While it is the Defendants' position that EUA-authorized Pfizer-BioNTech doses for adults are interchangeable for the purposes of the military's vaccination

requirement, I wanted to confirm that any of the Plaintiffs who are still required to receive the COVID-19 vaccine to satisfy the military's requirement may receive a shot from a Comirnaty-labelled vial.

If any of the Plaintiffs wish to do so, please prepare a memorandum addressed to the individual's commanding officer committing to taking a shot from a Comirnaty-labeled vial. Please provide the memorandum to me and I will ensure the request is appropriately transmitted to the respective commanding officer. Should any Plaintiff confirm in writing that they will take a Comirnaty-labeled dose, Defendants can ensure that Plaintiff will be administered one of those doses. If no Plaintiff is interested, please let us know that as well. This is not intended as an offer of settlement and we anticipate informing the Court of the offer and any response.

Thanks,

Cassie

Cassie Snyder

Trial Attorney

United States Department of Justice

Civil Division | Federal Programs Branch

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